1.S.B.CIVIL MISC. APPEAL NO.660/2003
Daulat Ram vs. Smt. Kuri and ors.

2.S.B.CIVIL MISC. APPEAL NO.659/2003
Daulat Ram vs. Onar Singh and ors.

DATE OF JUDGMENT ::: 1.3.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. S Saruparia, for the appellant.

Mr. S Johari a/w Ms.M Maheshwari, for the respondent insurance company.

Mr. Bhagirath Bishnoi for Mr.M Bora, for the respondents.

- - - - -

Heard learned counsel for the parties.

These two appeals are arising from the award dated 19.4.2003 by which the Motor Accident Claims Tribunal, Udaipur decided two claim cases no.44/1996 and 107/1996 and awarded compensation to the claimants. The claimants have not preferred any appeal for enhancement of any appeal nor they have preferred any cross objection, therefore, the issue involved in these appeals, as submitted by the appellant, is that the Tribunal has committed error of fact in holding that the driver of the vehicle was Daula s/o Khema whereas in fact, according to the owner, the driver of the vehicle at the relevant time was Daya Ram s/o Bhera Dangi. Daya Ram had valid driving license to drive the vehicle. If the finding of the Tribunal is reversed, then

the insurance company is liable to pay the compensation amount to the claimants in place of the owner. Another ground is that if the finding of the Tribunal is maintained and the driver of vehicle was Daula, then he was holding learner's driving license. In view of the judgment of the Hon'ble Apex Court delivered in the case of National Insurance Co. Ltd. vs. Swaran Singh reported in 2004 ACJ 1, learner's license is also valid license and the insurance company is liable to pay the compensation amount to the claimants.

Learned counsel for the respondent insurance company vehemently submitted that the Tribunal, after considering the oral as well as documentary evidence held that the driver of vehicle at the relevant time of accident was Daula and not Daya Ram. The finding of the Tribunal is based on not only the documents relating to the criminal proceedings but is based on the admission of owner of the vehicle as the owner of the vehicle in response to the notice under Section 133 of the MV Act himself admitted that Daula was driver at the relevant time.

So far as the other ground is concerned, learned counsel for the respondent company vehemently submitted that the appellant did not challenge the finding of the Tribunal exonerating the respondent company from the liability and the appellant only challenged the findings on issues no.1 and 2 recorded by the Tribunal, therefore, no relief can be granted.

On merits, learned counsel for the respondent submitted

that as per Section 10 of the MV Act, the license can be said to be valid license only when it is given for a particular and specific category of the vehicle as provided under Sub-section (2) of Section 10. In case, the license is not given for a particular category of vehicle, then as per Sub-section (3), it cannot be said to be a valid driving license to drive the vehicle for which the license has not been granted. In this case, the driver of the vehicle was holding learner's license and as per Rule 3 of the Central Rules framed under the MV Act, he could not have driven the vehicle without accompanying by an instructor holding an effective driving license. In view of the above, when the insurance company has been exempted from the liability and there is no specific challenge to exoneration, this Court may not interfere in the award passed by the Tribunal.

I considered the submissions of learned counsel for the parties and perused the facts of the case.

It is not in dispute that the vehicle involved in the accident was a mini truck with unladen weight less than 7500 kgs., therefore, it falls in the category of Light Motor Vehicle as defined in Section 2(21) of the MV Act. As per the definition of light motor vehicle, it includes transport vehicle also, therefore, the transport vehicle are divided into two categories one falling under light motor vehicle and another heavy goods vehicle as defined in Section 2(16) of the MV Act. This vehicle since had less

than 7500 kgs. weight is light motor vehicle though it is a transport vehicle as defined under Section 2(47) of the MV Act. It is true that under Section 10 where the classes of vehicles have been given for which driving license is issued. Light motor vehicle and transport vehicle are shown separately in the list of categories of vehicle which are separate entries at (d) and (e) under Sub-section (2) of Section 10. But at the same time, the class of vehicle as described under sub-clause (d) of Section 10(2) read with definition of Section 2(21), it is clear that the transport vehicle itself is included in the definition of light motor vehicle. In the facts of this case, vehicle falls in the light motor vehicle's category because the vehicle has weight less than 7500 kgs. And falls in the same description as given in sub-clause (d) of Section 10(2).

In view of the above, even if there is mention of light motor vehicle in the license, still the driver of the vehicle was holding learner's driving license for light motor vehicle was holding valid driving license to drive the vehicle in question.

It will be worthwhile to mention here that the Tribunal itself held that the driver of the vehicle who had learner's license could have driven the vehicle but exonerated the insurance company on the ground that at the time of the accident, the goods were carried in the vehicle. This reason given by the Tribunal cannot be sustained in view of the fact that the definition of transport vehicle as given in Section 2(47) itself very clearly provides that the transport vehicle means goods

carriage also and goods carriage by virtue of being transport vehicle falls in the definition of light motor vehicle. Therefore, carrying goods in goods carriage makes the vehicle a transport vehicle but still light motor vehicle. In view of the above, the finding of the tribunal appears to be contrary to law and on this count, the insurance company could not have been exonerated by the Tribunal.

So far as the question of driver of the vehicle having learner's license is concerned, it will be worthwhile to mention here that the respondent insurance company has not pleaded that because of having learner's license, only it contributed towards the accident. In view of the above, the Tribunal committed serious error of fact as well as law in exonerating the insurance company.

It is true that the appellant in so many words has not challenged the finding of issues no.3 and 4 but at the same time, the appellate court has ample power to mould the relief particularly in view of the fact that the relief has been claimed by the owner of the vehicle for setting aside of the entire award and this court finds lesser relief appropriate. Otherwise also, under Order 41 Rule 33 CPC, appropriate relief can be granted even in favour of non-appealing parties. In this case, even when there is no specific pleading and orally, it was argued at length that the appellant alone cannot be held liable and insurance company has been wrongly exonerated, this Court is of the

view that the aim and object of the MV Act should prevail and to non-appealing parties who are the claimants and who are the real beneficiaries under the MV Act should get the benefit.

In view of the above, the liability of the insurance company is held.

So far as the contention of the appellant that the Tribunal committed error in declaring Daula as driver of the vehicle is concerned, I do not find any substance in view of the fact that in support of the contention of the appellant, the owner of the vehicle, that driver was Daya Ram, there is evidence of the claimant only which was relied upon by the owner is to the effect that the claimant was not knowing the name of the driver but he/she was knowing that the driver was belonging from a particular village and according to learned counsel for the appellant, the driver Daula is not from the said village but driver Daya Ram is from the said village which was stated by the claimant in his/her statement.

This argument cannot be accepted in view of the fact that the F.I.R. was lodged wherein the name of driver was given as Daula and after investigation, he was found guilty. But that finding is not binding on the Tribunal nor it is persuasive to this Court. Apart from it, none else than the owner of the vehicle in response to the notice under Section 133, stated that Daula was driver. In view of the above, the ground raised by the appellant about challenge to the finding of the Tribunal with reference to

the driver of the vehicle is rejected.

In view of the above discussion, these appeals are allowed and it is held that the respondent insurance company is liable to pay the award amount to the claimants.

(PRAKASH TATIA), J.

S.Phophaliya